

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
HAMMOND DIVISION

IN RE: )  
 )  
ARLESTER PERRY JACKSON, JR. ) CASE NO. 05-67929 JPK  
 ) Chapter 7  
Debtor. )

ORDER REGARDING DISMISSAL OF CASE

This Chapter 7 case was opened on the Court's record on October 14, 2005. As stated in the Court's order entered on October 16, 2005, the petition which was filed on that date was filed electronically, and did not indicate that it had been originally signed by the debtor. That order provided the debtor with three days from its date to file a document indicating the debtor's original signature on the petition. On October 26, 2005, the counsel for the debtor filed a two-page petition, the second page of which evidences the debtor's original signature. In accordance with its standard procedure, the Court set a hearing by order entered on November 4, 2005 at which debtor's counsel was ordered to appear and to then produce to the Court at the hearing "any originally signed documents in his possession which are described in the immediately preceding paragraph" of that order, which included the original signed petition. At the hearing held pursuant to that order on November 18, 2005, Attorney Eduardo Fontanez appeared before the Court and candidly stated to the Court that on the date the case was electronically filed – October 14, 2005 – he did not have in his possession a petition originally signed by the debtor, and that the debtor had signed a number of other documents applicable to this case on that date, but that for some reason the petition was not among them.

The most critical document with respect to the initiation of a case under the Bankruptcy Code is a petition. As stated in 11 U.S.C. § 301, a voluntary case "is commenced by the filing with the bankruptcy court of a petition under such chapter by an entity that may be a debtor under such chapter". Fed.R.Bankr.P. 9009 provides: "The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. . . . The forms shall be construed to be consistent with these rules and the Code." Official Form No. 1, the

form of voluntary petition applicable with respect to this case, requires the Signature of the Debtor. The Court's Fifth Amended Order Authorizing Electronic Case Filing provides the manner in which the signature of the debtor is to be evidenced on a petition: paragraph 11(c) of that order provides that the signature upon a petition is to be indicated by the submitting of a scanned copy of the originally signed document, attaching a scanned copy of the originally signed signature page to the electronically filed petition, or separately submitting a scanned copy of the originally signed signature page immediately after the electronic filing of the signed document. All of these procedure contemplate, as does Official Form No. 1, that when the petition is filed, it has actually been signed by the debtor. Absent a signature by the debtor, there is absolutely no indication to the Court or to any other party in interest that the case has been validly initiated by the person on whose behalf it is represented to have been filed. Absent a petition signed by the debtor prior to the filing of the petition with the Court, the Court has no jurisdiction over a case and there is in fact no case because there is no petition conforming to the requirements of the law, as stated above.

That is the case here: on the date this case was opened electronically on the Court's records, there was in fact no petition which had been signed by the debtor, and this case from its inception was therefore a nullity.

IT IS THEREFORE ORDERED:

1. That the Order for relief in bankruptcy herein should be, and the same is hereby, set aside.
2. That the Petition filed herein should be, and the same is hereby **DISMISSED** pursuant to 11 U.S.C. §349.
3. That the bond of said Trustee be and it hereby is cancelled if severable, and that the surety or sureties thereon be, and they hereby are, released from any further liability thereunder, except any liability which may have accrued during the time such bond was in effect.
4. That this case should be and is hereby **TERMINATED**.

Dated at Hammond, Indiana on November 22, 2005.



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J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:

Debtor, Attorney for Debtor, Trustee, US Trustee  
All Creditors, All Parties-in-Interest